IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JOSEPH A. CRISOSTOMO,
Defendant-Appellant.

SUPREME COURT NO. 2013-SCC-0008-CRM
SUPERIOR COURT NO. 12-0045C

OPINION

Cite as: 2014 MP 18

Decided December 12, 2014

Michael Sato, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Defendant-Appellant Joseph A. Crisostomo

Chemere K. McField and Margo Brown-Badawy, Assistant Attorneys General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 A police cruiser patrolled an obscure beach late at night. As they approached the beach, a parked car started its engine, turned on its lights, and began to leave. Police stopped the car because of the time, the location, and the car's attempt to leave. A subsequent search turned up drugs and drug paraphernalia. One of the car's occupants, Defendant-Appellant Joseph A. Crisostomo ("Crisostomo"), argues that the circumstances did not provide police reasonable suspicion to make the stop. As a consequence, he argues the evidence recovered during the search must be suppressed and the conviction founded on that evidence vacated. For the reasons below, we REVERSE the denial of the motion to suppress and VACATE the conviction.

I. Factual and Procedural Background

¶ 2 Around 3:00 a.m. on a weekday, Crisostomo was a passenger in a car parked near a beach just north of Sugar Dock in Susupe. The area was secluded and accessible only through a one-lane dirt road ringed with heavy foliage.

¶ 3 When two officers in a police cruiser entered the area, Crisostomo's car turned on its lights and attempted to leave. While leaving, the car allegedly sped directly toward the officers, almost causing a head-on collision. But no collision occurred; instead, each car came to a stop, blocking the other from moving forward. Then the officers searched Crisostomo and his car, which turned up drugs and drug paraphernalia. Afterward, Crisostomo was charged with possession of a controlled substance. The driver was also charged with possession, but not for reckless driving.

¶ 4 Before trial, Crisostomo moved to suppress the evidence obtained during the stop because the police allegedly lacked reasonable suspicion for the initial detention. At the motion hearing, one of the officers testified that the area was known "for a lot of illegal activities," Tr. 8, including for runaways, and minors violating curfew and consuming alcohol. Relying on this testimony, the late hour of the stop, and the car's attempt to leave as soon as police arrived, the court denied the motion.

¶ 5 At trial, the other officer reinforced the pretrial testimony. Specifically, the officer stated on direct examination that the beach is a "known area for drug users," *id.* at 59; and again on cross that the area is "known as a hang-out for drug users." *Id.* at 80. The officer did not offer any data or other support to back up the statements.

¶ 6 Following trial, Crisostomo was convicted, which he now appeals.

II. Jurisdiction

¶ 7 We have jurisdiction over Commonwealth criminal actions. 1 CMC § 3202.

III. Standards of Review

¶ 8 Crisostomo challenges the trial court's reasonable-suspicion determination. This challenge contains four parts: (1) whether we can consider the trial testimony to evaluate the pretrial motion to suppress; (2) whether the trial court erred in finding the beach a high-crime area; (3) whether the trial court erred in concluding that the police had reasonable suspicion to temporarily detain the car he was riding in; and (4) whether the trial court erred by not suppressing the evidence. The first, third, and fourth challenges present constitutional questions, thus we review de novo, *see Commonwealth v. Pua*, 2009 MP 21 ¶¶ 11-12 (reviewing a motion to suppress de novo). The second challenge involves a factual determination, thus we review for clear error, *see Commonwealth v. Atalig*, 2002 MP 20 ¶ 69 (reviewing factual determinations for clear error). A clear error exists "[only if] after reviewing all the evidence we are left with a firm and definite conviction that a mistake has been made." *Id.*

IV. Discussion

A. *Scope of Record When Reviewing Denial of Motion to Suppress*

¶ 9 First, Crisostomo contends that this Court may not consider trial testimony when deciding whether the trial court improperly denied a pretrial motion to suppress. But this challenge is forestalled by *Commonwealth v. Pua*, 2009 MP 21, which squarely addressed "what evidence an appellate court may consider when reviewing a pretrial ruling on [a motion to suppress]." *Id.* ¶ 12. There, we concluded that this Court "will consider evidence produced at trial in determining whether the trial court erred in denying [a defendant's] motion to suppress." *Id.* ¶ 14. Because *Pua* controls, we may review both pretrial and trial testimony when examining a pretrial motion to suppress.

B. *High-Crime Area*

¶ 10 Second, Crisostomo claims that the trial court erred in finding that the beach was a high-crime area because that finding should require more than a police officer's unsubstantiated testimony that a place is a high-crime area.

¶ 11 The concept of a high-crime area is easy enough to imagine, but lacks a generally accepted definition. *See* Andrew Guthrie Ferguson & Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 AM. U. L. REV. 1587, 1590 (2008) ("The Supreme Court has never provided a definition. Lower courts are equally imprecise."). Capitalizing on the concept's amorphousness, officers routinely season their testimony with the magic words "high-crime area." *Id.* at 1590-91. But seldom do they offer evidence—empirical or anecdotal—to back up the claim. *Id.* at 1591. In effect, testifying officers encourage the fact-finder to take the officer's word for it. And often a fact-finder does; indeed, the mere mention that a place is a high-crime area "almost always shifts the analytical balance toward a finding of reasonable suspicion." *Id.* at 1590.

¶ 12 Because the character of a stop's location is factual in nature, *United States v. Wright*, 485 F.3d 45, 53 (1st Cir. 2007), we normally would defer to a trial court's determinations. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 69 (stating that we reverse factual determinations only if they are clearly erroneous). After all, the court observed the testimony; it had the benefit of seeing the witness' body language and hearing the witness' voice. These observations add color and context that a transcript cannot.

¶ 13 But here, an officer's confident body language and tone of voice are not enough to prove a high-crime claim. Allowing such a finding solely through unsubstantiated testimony (no matter how confidently stated) would give police the power to transform "any area into a high crime area based on their unadorned personal experiences." *United States v. Montero-Camargo*, 208 F.3d 1122, 1143 (9th Cir. 2000) (Kozinski, J., concurring). Yet those experiences can exaggerate the criminality of an area because "[j]ust as a man with a hammer sees every problem as a nail, so a man with a badge may see every corner of his beat as a high crime area." *Id.* This is natural—even expected—because police "are trained to detect criminal activity"; they view "the world with suspicious eyes." *Id.* But seeing some crime does not automatically make a place a high-crime area.

¶ 14 Accordingly, we conclude that an officer's sense of an area's criminality by itself is not enough to support a high-crime-area finding. Instead, the Commonwealth must provide objective, verifiable data showing by a preponderance of the evidence that at the time of the arrest, the disputed location had a higher crime rate than other relevant areas in a constitutionally significant manner.

¶ 15 Applying this rule here, there was insufficient evidence to support finding that the beach was a high-crime area. First, one officer said the area was known for "minors consuming alcohol and curfew violations," was one of the "usual spots for runaways," and generally "well-known for a lot of illegal activities." Tr. 8. Later, the other officer added that the beach is a "known area for drug users," *Id.* at 59. In each instance, the testimony relied on the area's reputation. The officers never said how many arrests took place at the beach, how many of those arrests led to convictions, or how those rates differed from other areas. In other words, they never provided the court the data necessary to independently review whether the beach was, in fact, a high-crime area.

¶ 16 In sum, it was an error to label the beach as a high-crime area solely on generalized assertions that an area was well-known for certain illegal activities.

C. *Reasonable Suspicion*

¶ 17 Third, Cristosomo argues that sitting in a car late at night at a beach that police claim is known for illegal activity did not give rise to reasonable suspicion.

¶ 18 Article I, section 3 of the NMI Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. This protection "'extend[s] to brief

investigatory stops of persons or vehicles that fall short of traditional arrest.'" *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 13 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). To make an investigatory stop, the officer must have a reasonable suspicion that criminal activity may be afoot. *Fu Zhu Lin*, 2014 MP 6 ¶ 13. Criminal activity, in turn, is either a felony crime, 6 CMC § 6103(d); or a traffic violation, *see* 9 CMC §§ 1302-04 (indicating police officers may stop individuals for violations of the traffic code).

¶ 19 "In reviewing whether an officer had a reasonable suspicion, courts require more than a hunch but much less than a preponderance of the evidence." *Fu Zhu Lin*, 2014 MP 6 ¶ 13. To make that determination, courts look at the totality of the circumstances to "see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Id.* (internal quotation omitted). "Bases for suspicion include inferences and deductions officers draw from applying their experience and specialized training to the situation at hand," *id.* ¶ 14, as well as "relevant characteristics of a location"—such as that the stop occurred in a high-crime area, *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). But merely being present "in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Id.*; *Brown v. Texas*, 443 U.S. 47, 49, 51-53 (1979) (reversing a stop, arrest, and subsequent search because the justification for the initial stop was not based on any specific facts or misconduct, but rather because the defendant was in a "high drug problem area").

¶ 20 Under this standard, the officers did not have reasonable suspicion of either a traffic-code violation or a felony offense. The police lacked reasonable suspicion of a traffic-code violation because the evidence does not support that the car was driving at an imprudent speed. The area was too small and rugged to build up a high rate of speed. What's more, not only was the driver not cited for a traffic violation (as would have been expected had the officers believed he broke the traffic code), but the car was going slow enough to stop short of the oncoming police cruiser. As for reasonable suspicion of a felony violation, police provided insufficient support that the beach was a high-crime area at the time of the stop. Nor did they show that Crisostomo *fled* the scene at the first sign of police. *See Wardlow*, 528 U.S. at 124 (viewing flight as "[h]eadlong flight"). At most, they showed that Crisostomo left (likely at a slow speed because of the rugged road), and that he did so at the first sign of an unidentified vehicle (because it was too dark to immediately identify the approaching vehicle as a police cruiser). What is left is that Crisostomo was at the beach at a late hour—but being out and about late at night is not enough to create reasonable suspicion. *United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013) (rejecting that "mere presence in a high crime area at night" constituted reasonable suspicion).

¶ 21 Because the totality of the circumstances did not give the officers reasonable suspicion of a felony or a traffic-code infraction, we reverse the order denying the motion to suppress.

D. *Exclusionary Rule*

¶ 22 That leaves Crisostomo's final claim: the exclusionary rule. Under the exclusionary rule, evidence obtained by police through unlawful means usually must be suppressed. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 28. Here, police did not have reasonable suspicion to make the initial stop. Nor does an exception to the exclusionary rule apply. Therefore, the evidence gained during the stop is suppressed.

V. Conclusion

¶ 23 For the stated reasons, we REVERSE the denial of the motion to suppress and VACATE the conviction.

SO ORDERED this 12th day of December 2014.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice